

current or former employee was subject to the higher deduction and Government contribution rates, the Department of Energy must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the Department of Energy waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM without delay as soon as possible.

(c) Upon proper application from an employee, former employee or eligible survivor of a former employee, the Department of Energy will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit or redeposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(d) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 831.808 Mandatory separation.

(a) Effective on and after October 17, 1999, the mandatory separation provisions of 5 U.S.C. 8335(b) apply to all nuclear materials couriers in primary and secondary positions. A mandatory separation

under 5 U.S.C. 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

§ 831.809 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a re-employed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.810 Review of decisions.

The following decisions may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board:

(a) The final decision of the Department of Energy issued to an employee, former employee, or survivor as the result of a request for determination filed under § 831.806; and

(b) The final decision of the Department of Energy that a break in service referred to in § 831.804(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1).

§ 831.811 Oversight of coverage determinations.

(a) Upon deciding that a position is a nuclear materials courier position, the agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position, or that an individual's service in any